98-84351-2

U.S. Supreme Court

William B. Knox, plaintiff in error, vs. Phoebe G. Lee...

[Washington, D.C.]

[1871]

98-84351-2
MASTER NEGATIVE #

COLUMBIA UNIVERSITY LIBRARIES
PRESERVATION DIVISION

BIBLIOGRAPHIC MICROFORM TARGET

ORIGINAL MATERIAL AS FILMED - EXISTING BIBLIOGRAPHIC RECORD

```
  OCLC:  37977811          Rec stat:    n
  Entered:    19971120     Replaced:    19971120      Used:    19971120
- Type:  a    ELvl:  K    Srce:  d    Audn:        Ctrl:        Lang:  eng
  BLvl:  m    Form:  a    Conf:  0    Biog:        MRec:        Ctry:  dcu
              Cont:       GPub:  f    Fict:  0     Indx:  0
  Desc:  a    Ills:       Fest:  0    DtSt:  s     Dates: 1871,     ↔
-   1  040    PR1 ▾c PR1 ↔
-   2  007    h ▾b d ▾d a ▾e f ▾f a--- ▾g b ▾h a ▾i c ▾j p ↔
-   3  007    h ▾b d ▾d a ▾e f ▾f a--- ▾g b ▾h a ▾i a ▾j p ↔
-   4  007    h ▾b d ▾d a ▾e f ▾f a--- ▾g b ▾h a ▾i b ▾j p ↔
-   5  090    ▾b  ↔
-   6  049    PR1A ↔
-   7  110 1  United States. ▾b Supreme Court. ↔
-   8  245 10 William B. Knox, plaintiff in error, vs. Phoebe G. Lee and Hugh
Lee, her husband ... ▾h [microform]. ↔
-   9  260    [Washington, D.C. : ▾b s.n., ▾c 1871] ↔
-  10  300    32 p. ; ▾c 23 cm. ↔
-  11  500    Caption title. ↔
-  12  500    At head of title: Supreme Court of the United States. ↔
-  13  500    "Nos. 10 and 17.--December term, 1870." ↔
-  14  533    Microfilm. ▾b New York, N.Y. : ▾c Columbia University Libraries,
▾d to be filmed in 1997. ▾e 1 microfilm reel ; 35 mm. ↔
```

RESTRICTIONS ON USE: *Reproductions may not be made without permission from Columbia University Libraries.*

TECHNICAL MICROFORM DATA

FILM SIZE: 35mm REDUCTION RATIO: 11:1 IMAGE PLACEMENT: IA (IIA) IB IIB

DATE FILMED: 2/28/98 INITIALS: F.C.

TRACKING # : 30260

FILMED BY PRESERVATION RESOURCES, BETHLEHEM, PA.

BIBLIOGRAPHIC IRREGULARITIES

MAIN ENTRY: U.S. Supreme Court

William B. Knox, plaintiff in error, vs. Phoebe G. Lee and Hugh Lee, her husband

Bibliographic Irregularities in the Original Document:

List all volumes and pages affected; include name of institution if filming borrowed text.

X Page(s) missing/not available: pages 1-2

____ Volume(s) missing/not available: ____

____ Illegible and/or damaged page(s): ____

____ Page(s) or volume(s) misnumbered: ____

____ Bound out of sequence: ____

____ Page(s) or volume(s) filmed from copy borrowed from: ____

____ Other: ____

____ Inserted material: ____

TRACKING#: MSH30260

342.73
332
28
No. 15.
15

SUPREME COURT OF THE UNITED STATES.

Nos. 10 and 17.—DECEMBER TERM, 1870.

William B. Knox, Plaintiff in Error, vs. Phœbe G. Lee and Hugh Lee, her Husband.	In error to the Circuit Court of the U. S. for the Western Dist. of Texas.
Thomas H. Parker, Plaintiff in Error, vs. George Davis.	In error to the Supreme Judicial Court of the Commonwealth of Massachusetts.

Mr. Justice FIELD dissenting.

Whilst I agree with the Chief Justice in the views expressed in his opinion in these cases, the great importance which I attach to the question of legal tender, induces me to present some further considerations on the subject.

Nothing has been heard from counsel in these cases, and nothing from the present majority of the court, which has created a doubt in my mind of the correctness of the judgment rendered in the case of Hepburn vs. Griswold, (8 Wallace, 603,) or of the conclusions expressed in the opinion of the majority of the court as then constituted. That judgment was reached only after repeated arguments were heard from able and eminent counsel, and after every point raised on either side had been the subject of extended deliberation.

The questions presented in that case were also involved in several other cases, and had been elaborately argued in them. It is not extravagant to say that no case has ever been decided by this court since its organization, in which the questions presented were more fully argued, or more maturely considered. It was hoped that a judgment thus reached would not be lightly disturbed. It was hoped that it had settled forever that under a constitution ordained, among other things, "to establish justice," legislation giving to one person the right to discharge his obligations to another by nominal instead of actual fulfillment, could never be justified.

I shall not comment upon the causes which have led to a reversal of that judgment. They are patent to every one. I will simply observe that the Chief Justice and the associate justices, who constituted the majority of the court when that judgment was rendered, still adhere to their former convictions. To them the reasons for the original decision are as cogent and convincing now as they were when that decision was pronounced; and to them its justice, as applied to past contracts, is as clear to-day as it was then.

In the cases now before us the questions stated, by order of the court, for the argument of counsel, do not present with entire accuracy the questions actually argued and decided. As stated, the questions are: 1st. Is the act of Congress known as the legal-tender act constitutional as to contracts made before its passage? 2nd. Is it valid as applicable to transactions since its passage?

The act thus designated as the legal-tender act is the act of Congress of February 25th, 1862, authorizing the issue of United States notes, and providing for their redemption or funding, and for funding the floating debt of the United States;* and the questions, as stated, would seem to draw into discussion the validity of the entire act; whereas, the only questions intended for argument, and actually argued and decided, relate—1st, to the validity of that provision of the act which declares that these notes shall be a legal tender in payment of debts, as applied to private debts and debts of the government contracted previous to the passage of the act; and 2d, to the validity of the provision as applied to similar contracts subsequently made. The case of Parker vs. Davis involves the consideration of the first question; and the case of Knox vs. Lee is supposed by a majority of the court to present the second question.

No question was raised as to the validity of the provisions of the act authorizing the issue of the notes, and making them receivable for dues to the United States; nor do I perceive that any objection could justly be made at this day to these provisions. The issue of the notes was a proper exercise of the power to borrow money, which is granted to Congress without limitation. The extent to which the power may be exercised depends, in all cases, upon the judgment of that body as to the necessities of the government. The power to borrow includes the power to give evidences of indebtedness and obligations of repayment. Instruments of this character are among the securities of the United States mentioned in the Constitution. These securities are sometimes in the form of certificates of indebtedness, but they may be issued in any other form, and in such form and in such amounts as will fit them for general circulation, and to that end may be made payable to bearer and transferable by delivery. The form of notes, varying in amounts to suit the convenience or ability of the lender, has been found by experience a convenient form, and the one best calculated to secure the readiest acceptance and the largest loan. It has been the practice of the government to use notes of this character in raising loans and obtaining supplies from an early period in its history, their receipt by third parties being in all cases optional.

In June, 1812, Congress passed an act which provided for the issue of treasury notes, and authorized the Secretary of the Treasury, with the approbation of the President, "to borrow from time to time, not under par, such sums" as the President might think expedient, "on the credit of such notes."†

In February, 1813, Congress passed another act for the issue of treasury notes, declaring "that the amount of money borrowed or obtained by virtue of the notes" issued under its second section should be a part of the money authorized to be borrowed under a previous act of the same session.‡ There are numerous other acts of a similar character on our

* 12 Stats., 345. † 2 Stats., 766. ‡ 2 Stats., 801.

statute books. More than twenty, I believe, were passed previous to the legal-tender act.*

In all of them the issue of the notes was authorized as a means of borrowing money, or obtaining supplies, or paying the debts of the United States, and in all of them the receipt of the notes by third parties was purely voluntary. Thus, in the first act, of June, 1812, the Secretary of the Treasury was authorized, not only to borrow on the notes, but to issue such notes as the President might think expedient "in payment of supplies or debts due by the United States to such public creditors or other persons" as might "*choose to receive such notes in payment at par.*" Similar provisions are found in all the acts except where the notes are authorized simply to take up previous loans.

The issue of the notes for supplies purchased or services rendered at the request of the United States is only giving their obligations for an indebtedness thus incurred; and the same power which authorizes the issue of notes for money must also authorize their issue for whatever is received as an equivalent for money. The result to the United States is the same as if the money were actually received for the notes and then paid out for the supplies or services.

The notes issued under the act of Congress of February 25th, 1862, differ from the treasury notes authorized by the previous acts to which I have referred, in the fact that they do not bear interest and do not designate on their face a period at which they shall be paid, features which may affect their value in the market but do not change their essential character. There cannot be, therefore, as already stated, any just objection at this day to the issue of the notes, nor to their adaptation in form for general circulation.

Nor can there be any objection to their being made receivable for dues to the United States. Their receivability in this respect is only the application to the demands of the government, and demands against it of the just principle which is applied to the demands of individuals against each other, that cross-demands shall offset and satisfy each other to the extent of their respective amounts. No rights of third parties are in any respect affected by the application of the rule here, and the purchasing and borrowing power of the notes are greatly increased by making them thus receivable for the public dues. The objection to the act does not

* Acts of Congress authorizing the issue of Treasury notes:

Vol. II.,	Statutes at	Large,	page	766,	approved,	June 30,	1812.
"	"	"	"	" 801,	"	Feb. 25,	1813.
" III.	"	"	"	100,	"	Mar. 4,	1814.
" "	"	"	"	161,	"	Dec. 26,	1814.
" "	"	"	"	213,	"	Feb. 24,	1815.
" V.	"	"	"	201,	"	Oct. 12,	1837.
" "	"	"	"	228,	"	May 21,	1838.
" "	"	"	"	323,	"	Mar. 2,	1839.
" "	"	"	"	376,	"	Mar. 31,	1840.
" "	"	"	"	411,	"	Feb. 15,	1841.
" "	"	"	"	469,	"	Jan. 31,	1842.
" "	"	"	"	473,	"	Apr. 15,	1842.
" "	"	"	"	581,	"	Aug. 31,	1842.
" "	"	"	"	614,	"	Mar. 3,	1843.
" IX.	"	"	"	39,	"	July 22,	1846.
" "	"	"	"	64,	"	Aug. 6,	1846.
" "	"	"	"	118,	"	Jan. 28,	1847.
" XI.	"	"	"	257,	"	Dec. 23,	1857.
" "	"	"	"	430,	"	Mar. 3,	1859.

13 My 88 T W. Dwight

lie in these features; it lies in the provision which declares that the notes shall be "a legal tender in payment of all debts public and private," so far as that provision applies to private debts, and debts owing by the United States.

In considering the validity and constitutionality of this provision, I shall in the first place confine myself to the provision in its application to private debts. Afterwards I shall have something to say of the provision in its application to debts owing by the government.

In the discussions upon the subject of legal tender the advocates of the measure do not agree as to the power in the Constitution to which it shall be referred;—some placing it upon the power to borrow money, some on the coining power, and some on what is termed a resulting power from the general purposes of the government;—and these discussions have been accompanied by statements as to the effect of the measure, and the consequences which must have followed had it been rejected, and which will now occur if its validity be not sustained, which rest upon no solid foundation, and are not calculated to aid the judgment in coming to a just conclusion.

In what I have to say I shall endeavor to avoid any such general and loose statements, and shall direct myself to an inquiry into the nature of these powers to which the measure is referred, and the relation of the measure to them.

Now if Congress can, by its legislative declaration, make the notes of the United States a legal tender in payment of private debts,—that is, can make them receivable against the will of the creditor in satisfaction of debts due to him by third parties,—its power in this respect is not derived from its power to borrow money, under which the notes were issued. That power is not different in its nature or essential incidents from the power to borrow possessed by individuals, and is not to receive a larger definition. Nor is it different from the power often granted to public and private corporations. The grant, it is true, is usually accompanied in these latter cases with limitations as to the amount to be borrowed, and a designation of the objects to which the money shall be applied,—limitations which in no respect affect the nature of the power. The terms "power to borrow money" have the same meaning in all these cases, and not one meaning when used by individuals, another when granted to corporations, and still a different one when possessed by Congress. They mean only a power to contract for a loan of money upon considerations to be agreed between the parties. The amount of the loan, the time of repayment, the interest it shall bear, and the form in which the obligation shall be expressed are simply matters of arrangement between the parties. They concern no one else. It is no part or incident of a contract of this character that the rights or interests of third parties, strangers to the matter, shall be in any respect affected. The transaction is completed when the lender has parted with his money, and the borrower has given his promise of repayment at the time, and in the manner, and with the securities stipulated between them.

As an inducement to the loan, and security for its repayment, the borrower may of course pledge such property or revenues, and annex to his promises such rights and privileges as he may possess. His stipulations in this respect are necessarily limited to his own property, rights, and privileges, and cannot extend to those of other persons.

Now, whether a borrower—be the borrower an individual, a corporation, or the government—can annex to the bonds, notes, or other evidences of debt given for the money borrowed, any quality by which they will serve as a means of satisfying the contracts of other parties, must necessarily depend upon the question whether the borrower possesses any right to interfere with such contracts, and determine how they shall be satisfied. The right of the borrower in this respect rests upon no different foundation than the right to interfere with any other property of third parties. And if it will not be contended, as I think I may assume it will not be, that the borrower possesses any right, in order to make a loan, to interfere with the tangible and visible property of third parties, I do not perceive how it can be contended that he has any right to interfere with their property when it exists in the form of contracts. A large part of the property of every commercial people exists in that form, and the principle which excludes a stranger from meddling with another's property which is visible and tangible, equally excludes him from meddling with it when existing in the form of contracts.

That an individual or a corporation borrowing possesses no power to annex to his evidences of indebtedness any quality by which the holder will be enabled to change his contracts with third parties, strangers to the loan, is admitted; but it is contended that Congress possesses such power because, in addition to the express power to borrow money, there is a clause in the Constitution which authorizes Congress to make all laws "necessary and proper" for the execution of the powers enumerated. This clause neither augments nor diminishes the expressly designated powers. It only states in terms what Congress would equally have had the right to do without its insertion in the Constitution. It is a general principle that a power to do a particular act includes the power to adopt all the ordinary and appropriate means for its execution. "Had the Constitution," says Hamilton, in the Federalist, speaking of this clause, "been silent on this head there can be no doubt that all the particular powers requisite as a means of executing the general powers would have resulted to the government by unavoidable implication. No axiom is more clearly established in law or in reason, that whenever the end is required the means are authorized; whenever a general power to do a thing is given every particular power necessary for doing it is included."*

The subsidiary power existing without the clause in question, its insertion in the Constitution was no doubt intended, as observed by Mr. Hamilton, to prevent "all caviling refinements" in those who might thereafter feel a disposition to curtail and evade the legitimate authorities of the Union; and also, I may add, to indicate the true sphere and limits of the implied powers.

But though the subsidiary power would have existed without this clause, there would have been the same perpetually recurring question as now, as to what laws are necessary and proper for the execution of the expressly enumerated powers.

The particular clause in question has at different times undergone elaborate discussion in Congress, in cabinets, and in the courts. Its meaning was much debated in the first Congress upon the proposition to incorporate a national bank, and afterwards in the cabinet of Washington, when that measure was presented for his approval. Mr. Jefferson, then Secre-

*The Federalist, No. 44.

tary of State, and Mr. Hamilton, then Secretary of the Treasury, differed widely in their construction of the clause, and each gave his views in an elaborate opinion. Mr. Jefferson held that the word "necessary" restricted the power of Congress to the use of those means, without which the grant would be nugatory, thus making necessary equivalent to indispensable.

Mr. Hamilton favored a more liberal, and in my judgment, a more just interpretation, and contended that the terms "necessary and proper" meant no more than that the measures adopted must have an obvious relation as a means to the end intended. "If the end," he said, "be clearly comprehended within any of the specified powers, and if the measure have an obvious relation to that end, and is not forbidden by any particular provision of the Constitution, it may safely be deemed to come within the compass of the national authority." There "is also," he added, "this further criterion which may materially assist the decision. Does the proposed measure abridge a pre-existing right of any state, or of any individual? If it does not, there is a strong presumption in favor of its constitutionality; and slighter relations to any declared object may be permitted to turn the scale." From the criterion thus indicated it would seem that the distinguished statesman was of opinion, that a measure which did interfere with a pre-existing right of a state or an individual would not be constitutional.

The interpretation given by Mr. Hamilton was substantially followed by Chief Justice Marshall in McCullough vs. The State of Maryland, when, speaking for the court, he said that if the end to be accomplished by the legislation of Congress be legitimate, and within the scope of the Constitution, "all the means which are appropriate, which are plainly adapted to that end, and which are not prohibited, but are consistent with the letter and spirit of the Constitution, are constitutional." The Chief Justice did not, it is true, in terms declare that legislation which is not thus appropriate, and plainly adapted to a lawful end, is unconstitutional, but such is the plain import of the argument advanced by him; and that conclusion must also follow from the principle that, when legislation of a particular character is specially authorized, the opposite of such legislation is inhibited.

Tested by the rule given by Mr. Hamilton, or by the rule thus laid down by this court through Mr. Chief Justice Marshall, the annexing of a quality to the promises of the government for money borrowed, which will enable the holder to use them as a means of satisfying the demands of third parties, cannot be sustained as the exercise of an appropriate means of borrowing. That is only appropriate which has some relation of fitness to an end. Borrowing, as already stated, is a transaction by which, on one side, the lender parts with his money, and on the other the borrower agrees to repay it in such form and at such time as may be stipulated. Though not a necessary part of the contract of borrowing, it is usual for the borrower to offer securities for the repayment of the loan. The fitness which would render a means appropriate to this transaction thus considered must have respect to the terms which are essential to the contract, or to the securities which the borrower may furnish as an inducement to the loan. The quality of legal tender does not touch the terms of the contract of borrowing, nor does it stand as a security for the loan. A security supposes some right or interest in the thing pledged, which is subject to the disposition of the borrower.

There has been much confusion on this subject from a failure to distinguish between the adaptation of particular means to an end and the effect, or supposed effect, of those means in producing results desired by the government. The argument is stated thus: the object of borrowing is to raise funds; the annexing of the quality of legal tender to the notes of the government induces parties the more readily to loan upon them; the result desired by the government—the acquisition of funds—is thus accomplished; therefore, the annexing of the quality of legal tender is an appropriate means to the execution of the power to borrow. But it is evident that the same reasoning would justify, as appropriate means to the execution of this power, any measures which would result in obtaining the required funds. The annexing of a provision by which the notes of the government should serve as a free ticket in the public conveyances of the country, or for ingress into places of public amusement, or which would entitle the holder to a percentage out of the revenues of private corporations, or exempt his entire property, as well as the notes themselves, from state and municipal taxation, would produce a ready acceptance of the notes. But the advocate of the most liberal construction would hardly pretend that these measures, or similar measures touching the property of third parties, would be appropriate as a means to the execution of the power to borrow. Indeed, there is no invasion by government of the rights of third parties which might not thus be sanctioned upon the pretence that its allowance to the holder of the notes would lead to their ready acceptance, and produce the desired loan.

The actual effect of the quality of legal tender in inducing parties to receive them was necessarily limited to the amount required by existing debtors, who did not scruple to discharge with them their pre-existing liabilities. For moneys desired from other parties, or supplies required for the use of the army or navy, the provision added nothing to the value of the notes. Their borrowing power or purchasing power depended, by a general and an universal law of currency, not upon the legal-tender clause, but upon the confidence which the parties receiving the notes had in their ultimate payment. Their exchangeable value was determined by this confidence, and every person dealing in them advanced his money and regulated his charges accordingly.

The inability of mere legislation to control this universal law of currency is strikingly illustrated by the history of the bills of credit issued by the Continental Congress during our revolutionary war. From June, 1775, to March, 1780, these bills amounted to over three hundred millions. Depreciation followed as a natural consequence, commencing in 1777, when the issues only equaled fourteen millions. Previous to this time, in January, 1776, when the issues were only five millions, Congress had, by resolution, declared that if any person should be "so lost to all virtue and regard to his country" as to refuse to receive the bills in payment, he should, on conviction thereof by the committee of the city, county, or district, or, in case of appeal from their decision, by the assembly, convention, council, or committee of safety of the colony where he resided, be "deemed, published, and treated as an enemy of his country, and precluded from all trade or intercourse with the inhabitants" of the colonies.*

* 2 Journals of Congress, 21.

And in January, 1777, when as yet the issues were only fourteen millions, Congress passed this remarkable resolution:

"Resolved, That all bills of credit emitted by authority of Congress ought to pass current in all payments, trade, and dealings in these states, and be deemed in value equal to the same nominal sums in Spanish milled dollars, and that whosoever shall offer, ask, or receive more in the said bills for any gold or silver coins, bullion, or any other species of money whatsoever, than the nominal sum or amount thereof in Spanish milled dollars, or more in the said bills for any lands, houses, goods, or commodities whatsoever than the same could be purchased at of the same person or persons in gold, silver, or any other species of money whatsoever, or shall offer to sell any goods or commodities for gold or silver coins or any other species of money whatsoever and refuse to sell the same for the said continental bills, every such person ought to be deemed an enemy to the liberty of these United States and to forfeit the value of the money so exchanged, or house, land, or commodity so sold or offered for sale. And it is recommended to the legislatures of the respective states to enact laws inflicting such forfeitures and other penalties on offenders as aforesaid as will prevent such pernicious practices. That it be recommended to the legislatures of the United States to pass laws to make the bills of credit issued by the Congress a lawful tender in payments of public and private debts, and a refusal thereof an extinguishment of such debts; that debts payable in sterling money be discharged with continental dollars at the rate of 4*s*. 6*d*. sterling per dollar, and that in discharge of all other debts and contracts continental dollars pass at the rate fixed by the respective states for the value of Spanish milled dollars."

The several states promptly responded to the recommendations of Congress and made the bills a legal tender for debts and the refusal to receive them an extinguishment of the debt.

Congress also issued, in September, 1779, a circular addressed to the people on the subject, in which they showed that the United States would be able to redeem the bills, and they repelled with indignation the suggestion that there could be any violation of the public faith. The "pride of America," said the address, "revolts from the idea; her citizens know for what purposes these emissions were made, and have repeatedly plighted their faith for the redemption of them; they are to be found in every man's possession, and every man is interested in their being redeemed; they must, therefore, entertain a high opinion of American credulity who supposes the people capable of believing, on due reflection, that all America will, against the faith, the honor, and the interest of all America, be ever prevailed upon to countenance, support, or permit so ruinous, so disgraceful a measure. We are convinced that the efforts and arts of our enemies will not be wanting to draw us into this humiliating and contemptible situation. Impelled by malice and the suggestions of chagrin and disappointment at not being able to bend our necks to the yoke, they will endeavor to force or seduce us to commit this unpardonable sin in order to subject us to the punishment due to it, and that we may thenceforth be a reproach and a by-word among the nations. Apprised of these consequences, knowing the value of national character, and impressed with a due sense of the immutable laws of justice and honor, it is impossible that America should think without horror of such an execrable deed."*

Yet in spite of the noble sentiments contained in this address, which bears the honored name of John Jay, then President of Congress and afterwards the first Chief Justice of this court, and in spite of legal tender provisions and harsh penal statutes, the universal law of currency prevailed. Depreciation followed until it became so great that the very idea of redemption at par was abandoned.

Congress then proposed to take up the bills by issuing new bills on the credit of the several states, guaranteed by the United States, not exceeding one-twentieth of the amount of the old issue, the new bills to draw interest and be redeemable in six years. But the scheme failed and the bills became, during 1780, of so little value that they ceased to circulate and "quietly died," says the historian of the period, "in the hands of their possessors."†

And it is within the memory of all of us that during the late rebellion the notes of the United States issued under the legal-tender act rose in value in the market as the successes of our arms gave evidence of an early termination of the war, and that they fell in value with every triumph of the Confederate forces. No legislation of Congress declaring these notes to be money instead of representatives of money or credit could alter this result one jot or tittle. Men measured their value not by congressional declaration, which could not alter the nature of things, but by the confidence reposed in their ultimate payment.

Without the legal-tender provision the notes would have circulated equally well and answered all the purposes of government—the only direct benefit resulting from that provision arising, as already stated, from the ability it conferred upon unscrupulous debtors to discharge with them previous obligations. The notes of state banks circulated without possessing that quality and supplied a currency for the people just so long as confidence in the ability of the banks to redeem the notes continued. The notes issued by the national bank associations during the war, under the authority of Congress, amounting to three hundred millions, which were never made a legal tender, circulated equally well with the notes of the United States. Neither their utility nor their circulation was diminished in any degree by the absence of a legal-tender quality. They rose and fell in the market under the same influences and precisely to the same extent as the notes of the United States, which possessed this quality.

It is foreign, however, to my argument to discuss the utility of the legal-tender clause. The utility of a measure is not the subject of judicial cognizance, nor, as already intimated, the test of its constitutionality. But the relation of the measure as a means to an end, authorized by the Constitution, is a subject of such cognizance, and the test of its constitutionality, when it is not prohibited by any specific provision of that instrument, and is consistent with its letter and spirit. "The degree," said Hamilton, "in which a measure is necessary can never be a test of the *legal right* to adopt it. That must be a matter of opinion, and can only be a test of expediency. The relation between the means and the

* 5 Journals of Congress, p. 351.
This address was written by Mr. Jay.—(See Flanders' Lives and Times of the Chief Justices, vol. 1, page 256.)
† Pitkin's History, 2 vol., page 157.

end, between the nature of a *means* employed toward the execution of the power and the *object* of that power, must be the criterion of unconstitutionality; not the more or less of necessity or utility."

If this were not so, if Congress could not only exercise, as it undoubtedly may, unrestricted liberty of choice among the means which are appropriate and plainly adapted to the execution of an express power, but could also judge, without its conclusions being subject to question in cases involving private rights, what means are thus appropriate and adapted, our government would be, not what it was intended to be, one of limited, but one of unlimited powers.

Of course Congress must inquire in the first instance, and determine for itself not only the expediency, but the fitness to the end intended, of every measure adopted by its legislation. But the power of this tribunal to revise these determinations in cases involving private rights has been uniformly asserted, since the formation of the Constitution to this day, by the ablest statesmen and jurists of the country.

I have thus dwelt at length upon the clause of the Constitution investing Congress with the power to borrow money on the credit of the United States, because it is under that power that the notes of the United States were issued, and it is upon the supposed enhanced value which the quality of legal tender gives to such notes, as the means of borrowing, that the validity and constitutionality of the provision annexing this quality are founded. It is true that, in the arguments of counsel, and in the several opinions of different state courts, to which our attention has been called, and in the dissenting opinion in Hepburn vs. Griswold, reference is also made to other powers possessed by Congress, particularly to declare war, to suppress insurrection, to raise and support armies, and to provide and maintain a navy; all of which were called into exercise and severely taxed at the time the legal-tender act was passed. But it is evident that the notes have no relation to these powers, or to any other powers of Congress, except as they furnish a convenient means for raising money for their execution. The existence of the war only increased the urgency of the government for funds. It did not add to its powers to raise such funds, or change, in any respect, the nature of those powers or the transactions which they authorized. If the power to engraft the quality of legal tender upon the notes existed at all with Congress, the occasion, the extent, and the purpose of its exercise were mere matters of legislative discretion; and the power may be equally exerted when a loan is made to meet the ordinary expenses of government in time of peace, as when vast sums are needed to raise armies and provide navies in time of war. The wants of the government can never be the measure of its powers.

The Constitution has specifically designated the means by which funds can be raised for the uses of the government, either in war or peace. These are taxation, borrowing, coining, and the sale of its public property. Congress is empowered to levy and collect taxes, duties, imposts, and excises to any extent which the public necessities may require. Its power to borrow is equally unlimited. It can convert any bullion it may possess into coin, and it can dispose of the public lands and other property of the United States or any part of such property. The designation of these means exhausts the powers of Congress on the subject of raising money. The designation of the means is a negation of all others,

for the designation would be unnecessary and absurd if the use of any and all means were permissible without it. These means exclude a resort to forced loans, and to any compulsory interference with the property of third persons, except by regular taxation in one of the forms mentioned.

But this is not all. The power "to coin money" is, in my judgment, inconsistent with and repugnant to the existence of a power to make anything but coin a legal tender. To coin money is to mould metallic substances having intrinsic value into certain forms convenient for commerce, and to impress them with the stamp of the government indicating their value. Coins are pieces of metal, of definite weight and value, thus stamped by national authority. Such is the natural import of the terms "to coin money" and "coin;" and if there were any doubt that this is their meaning in the Constitution, it would be removed by the language which immediately follows the grant of the "power to coin," authorizing Congress to regulate the value of the money thus coined, and also "of foreign coin," and by the distinction made in other clauses between coin and the obligations of the general government and of the several states.

The power of regulation conferred is the power to determine the weight and purity of the several coins struck, and their consequent relation to the monetary unit which might be established by the authority of the government—a power which can be exercised with reference to the metallic coins of foreign countries, but which is incapable of execution with reference to their obligations or securities.

Then, in the clause of the Constitution immediately following, authorizing Congress "to provide for the punishment of counterfeiting the securities and current coin of the United States," a distinction between the obligations and coins of the general government is clearly made. And in the tenth section, which forbids the states to "coin money, emit bills of credit, and make anything but gold and silver coin a tender in payment of debts," a like distinction is made between coin and the obligations of the several states. The terms gold and silver as applied to the coin exclude the possibility of any other conclusion.

Now, money in the true sense of the term is not only a medium of exchange, but it is a standard of value by which all other values are measured. Blackstone says, and Story repeats his language, "money is an universal medium or common standard, by a comparison with which the value of all merchandise may be ascertained, or it is a sign which represents the respective values of all commodities."* Money being such standard, its coins or pieces are necessarily a legal tender to the amount of their respective values for all contracts or judgments payable in money, without any legislative enactment to make them so. The provisions in the different coinage acts that the coins to be struck shall be such legal tender, are merely declaratory of their effect when offered in payment, and are not essential to give them that character.

The power to coin money is, therefore, a power to fabricate coins out of metal as money, and thus make them a legal tender for their declared values as indicated by their stamp. If this be the true import and meaning of the language used, it is difficult to see how Congress can

* 1 Black. Com., 276; 1 Story on the Const., sec. 1118.

make the paper of the government a legal tender. When the Constitution says that Congress shall have the power to make metallic coins a legal tender it declares in effect that it shall make nothing else such tender. The affirmative grant is here a negative of all other power over the subject.

Besides this, there cannot well be two different standards of value, and consequently two kinds of legal tender for the discharge of obligations arising from the same transactions. The standard or tender of the lower actual value would in such case inevitably exclude and supersede the other, for no one would use the standard or tender of higher value when his purpose could be equally well accomplished by the use of the other. A practical illustration of the truth of this principle we have all seen in the effect upon coin of the act of Congress making the notes of the United States a legal tender. It drove coin from general circulation, and made it, like bullion, the subject of sale and barter in the market.

The inhibition upon the states to coin money and yet to make anything but gold and silver coin a tender in payment of debts, must be read in connection with the grant of the coinage power to Congress. The two provisions taken together indicate beyond question that the coins which the national government was to fabricate, and the foreign coins, the valuation of which it was to regulate, were to consist principally, if not entirely, of gold and silver.

The framers of the Constitution were considering the subject of money to be used throughout the entire Union when these provisions were inserted, and it is plain that they intended by them that metallic coins fabricated by the national government, or adopted from abroad by its authority, composed of the precious metals, should everywhere be the standard and the only standard of value by which exchanges could be regulated and payments made.

At that time gold and silver moulded into forms convenient for use, and stamped with their value by public authority, constituted, with the exception of pieces of copper for small values, the money of the entire civilized world. Indeed these metals divided up and thus stamped always have constituted money with all people having any civilization, from the earliest periods in the history of the world down to the present time. It was with "four hundred sheckels of silver, current money with the merchant," that Abraham bought the field of Machpelah, nearly four thousand years ago.* This adoption of the precious metals as the subject of coinage,—the material of money by all peoples in all ages of the world,—has not been the result of any vagaries of fancy, but is attributable to the fact that they of all metals alone possess the properties which are essential to a circulating medium of uniform value.

"The circulating medium of a commercial community," says Mr. Webster, "must be that which is also the circulating medium of other commercial communities, or must be capable of being converted into that medium without loss. It must also be able not only to pass in payments and receipts among individuals of the same society and nation, but to adjust and discharge the balance of exchanges between different nations. It must be something which has a value abroad as well as at home, by which foreign as well as domestic debts can be satisfied. The precious

* 23 Genesis, 16.

metals alone answer these purposes. They alone, therefore, are money, and whatever else is to perform the functions of money must be their representative and capable of being turned into them at will. So long as bank paper retains this quality it is a substitute for money. Divested of this nothing can give it that character."*

The statesmen who framed the Constitution understood this principle as well as it is understood in our day. They had seen in the experience of the revolutionary period the demoralizing tendency, the cruel injustice and the intolerable oppression of a paper currency not convertible on demand into money, and forced into circulation by legal-tender provisions and penal enactments. When they therefore were constructing a government for a country, which they could not fail to see was destined to be a mighty empire, and have commercial relations with all nations, a government which they believed was to endure for ages, they determined to recognize in the fundamental law as the standard of value, that which ever has been and always must be recognized by the world as the true standard, and thus facilitate commerce, protect industry, establish justice, and prevent the possibility of a recurrence of the evils which they had experienced and the perpetration of the injustice which they had witnessed. "We all know," says Mr. Webster, "that the establishment of a sound and uniform currency was one of the greatest ends contemplated in the adoption of the present Constitution. If we could now fully explore all the motives of those who framed, and those who supported that Constitution, perhaps we should hardly find a more powerful one than this."†

And how the framers of the Constitution endeavored to establish this "sound and uniform currency" we have already seen in the clauses which they adopted providing for a currency of gold and silver coins. Their determination to sanction only a metallic currency is further evident from the debates in the convention upon the proposition to authorize Congress to emit bills on the credit of the United States. By bills of credit, as the terms were then understood, were meant paper issues, intended to circulate through the community for its ordinary purposes as money, bearing upon their face the promise of the government to pay the sums specified thereon at a future day. The orginal draft contained a clause giving to Congress power "to borrow money and emit bills on the credit of the United States," and when the clause came up for consideration, Mr. Morris moved to strike out the words "and emit bills on the credit of the United States," observing that "if the United States had credit such bills would be unnecessary; if they had not, unjust and useless." Mr. Madison inquired whether it would not be "sufficient to prohibit the making them a legal tender." "This will remove," he said, "the temptation to emit them with unjust views, and promissory notes in that shape may in some emergencies be best." Mr. Morris replied that striking out the words would still leave room for "notes of a responsible minister," which would do "all the good without the mischief." Mr. Gorham was for striking out the words without inserting any prohibition. If the words stood, he said, they might "suggest and lead to the measure," and that the power, so far as it was necessary or safe, was "involved in that of borrowing." Mr. Mason said he was unwilling "to tie the

* Webster's Works, vol. 3, page 41.
† Webster's Works, vol. 3, p. 395.

hands of Congress" and thought Congress "would not have the power unless it were expressed." Mr. Ellsworth thought it "a favorable moment to shut and bar the door against paper money." "The mischiefs," he said, "of the various experiments which had been made were now fresh in the public mind and had excited the disgust of all the respectable part of America. By withholding the power from the new government, more friends of influence would be gained to it than by almost anything else. Paper money can in no case be necessary. Give the government credit, and other resources will offer. The power may do harm, never good." Mr. Wilson thought that "it would have a most salutary influence on the credit of the United States to remove the possibility of paper money." "This expedient," he said, "can never succeed whilst its mischiefs are remembered, and as long as it can be resorted to it will be a bar to other resources." Mr. Butler was urgent for disarming the government of such a power, and remarked "that paper was a legal tender in no country in Europe." Mr. Mason replied that if there was no example in Europe there was none in which the government was restrained on this head, and he was averse "to tying up the hands of the legislature altogether." Mr. Langdon preferred to reject the whole plan than retain the words.

Of those who participated in the debates only one, Mr. Mercer, expressed an opinion favorable to paper money, and none suggested that if Congress were allowed to issue the bills their acceptance should be compulsory—that is, that they should be made a legal tender. But the words were stricken out by a vote of nine states to two. Virginia voted for the motion, and Mr. Madison has appended a note to the debates, stating that her vote was occasioned by his acquiescence, and that he "became satisfied that striking out the words would not disable the government from the use of public notes, as far as they could be safe and proper; and would only cut off the pretext for a *paper currency* and particularly for making the bills *a tender* either for public or private debts."*

If anything is manifest from these debates it is that the members of the convention intended to withhold from Congress the power to issue bills to circulate as money,—that is, to be receivable in compulsory payment, or in other words having the quality of legal tender,—and that the express power to issue the bills was denied, under an apprehension that if granted it would give a pretext to Congress, under the idea of declaring their effect, to annex to them that quality. The issue of notes simply as a means of borrowing money, which of course would leave them to be received at the option of parties, does not appear to have been seriously questioned. The circulation of notes thus issued as a voluntary currency and their receipt in that character in payment of taxes, duties, and other public expenses, was not subject to the objections urged.

I am aware of the rule that the opinions and intentions of individual members of the convention, as expressed in its debates and proceedings, are not to control the construction of the plain language of the Constitution or narrow down the powers which that instrument confers. Members, it is said, who did not participate in the debate may have entertained different views from those expressed. The several state conventions to which the Constitution was submitted may have differed widely from each other and from its framers in their interpretation of its clauses.

*Madison's Papers. vol. 3, page 1346.

We all know that opposite opinions on many points were expressed in the conventions, and conflicting reasons were urged both for the adoption and the rejection of that instrument. All this is very true, but it does not apply in the present case, for on the subject now under consideration there was everywhere, in the several state conventions and in the discussions before the people, an entire uniformity of opinion, so far as we have any record of its expression, and that concurred with the intention of the convention, as disclosed by its debates, that the Constitution withheld from Congress all power to issue bills to circulate as money, meaning by that bills made receivable in compulsory payment, or, in other words, having the quality of legal tender. Every one appears to have understood that the power of making paper issues a legal tender, by Congress or by the states, was absolutely and forever prohibited.

Mr. Luther Martin, a member of the convention, in his speech before the Maryland legislature, as reported in his letter to that body, states the arguments urged against depriving Congress of the power to emit bills of credit, and then says that a "majority of the convention, being wise beyond every event and being willing to risk any political evil rather than admit the idea of a paper emission in any possible case, refused to trust this authority to a government to which they were lavishing the most unlimited powers of taxation and to the mercy of which they were willing blindly to trust the liberty and property of the citizens of every state in the Union, *and they erased that clause from the system.*"

Not only was this construction given to the Constitution by its framers and the people in their discussions at the time it was pending before them, but until the passage of the act of 1862, a period of nearly three-quarters of a century, the soundness of this construction was never called in question by any legislation of Congress or the opinion of any judicial tribunal. Numerous acts, as already stated, were passed during this period, authorizing the issue of notes for the purpose of raising funds or obtaining supplies, but in none of them was the acceptance of the notes made compulsory. Only one instance have I been able to find in the history of congressional proceedings where it was even suggested that it was within the competency of Congress to annex to the notes the quality of legal tender, and this occurred in 1814. The government was then greatly embarrassed from the want of funds to continue the war existing with Great Britain, and a member from Georgia introduced into the House of Representatives several resolutions directing an inquiry into the expediency of authorizing the treasury to issue notes convenient for circulation and making provision for the purchase of supplies in each state. Among the resolutions was one declaring that the notes to be issued should be a legal tender for debts due or subsequently becoming due between citizens of the United States and between citizens and foreigners. The House agreed to consider all the resolutions but the one containing the legal-tender provision. That it refused to consider by a vote of more than two to one.*

As until the act of 1862 there was no legislation making the acceptance of notes issued on the credit of the United States compulsory, the construction of the clause of the Coustitution containing the grant of the coinage power never came directly before this court for construction, and the attention of the court was only incidentally drawn to it. But when-

*Benton's Abridg., vol. 5, p. 361.

ever the court spoke on the subject, even incidentally, its voice was in entire harmony with that of the convention.

Thus, in Gwin vs. Breedlove,* where a marshal of Mississippi, commanded to collect a certain amount of dollars on execution, received the amount in bank notes, it was held that he was liable to the plaintiff in gold and silver. "By the Constitution of the United States," said the court, "gold or silver coin made current by law can only be tendered in payment of debts."

And in the case of the United States vs. Marrigold,† where the question arose whether Congress had power to enact certain provisions of law for the punishmnent of persons bringing into the United States counterfeit coin with intent to pass it, the court said: These provisions "appertain to the execution of an important trust invested by the Constitution, and to the obligation to fulfill that trust on the part of the government, namely, the trust and the duty of creating and maintaining a uniform and pure metallic standard of value throughout the Union. The power of coining money and of regulating its value was delegated to Congress by the Constitution for the very purpose, as assigned by the framers of that instrument, of creating and preserving the uniformity and purity of such a standard of value, and on account of the impossibility which was foreseen of otherwise preventing the inequalities and the confusion necessarily incident to different views of policy, which in different communities would be brought to bear on this subject. The power to coin money being thus given to Congress, founded on public necessity, it must carry with it the correlative power of protecting the creature and object of that power."

It is difficult to perceive how the trust and duty here designated, of "creating and maintaining a uniform and metallic standard of value throughout the Union," is discharged, when another standard of lower value and fluctuating character is authorized by law, which necessarily operates to drive the first from circulation.

In addition to all the weight of opinion I have mentioned we have, to the same purport, from the adoption of the Constitution up to the passage of the act of 1862, the united testimony of the leading statesmen and jurists of the country. Of all the men who, during that period, participated with any distinction in the councils of the nation, not one can be named who ever asserted any different power in Congress than what I have mentioned. As observed by the Chief Justice, statesmen who disagreed widely on other points agreed on this.

Mr. Webster, who has always been regarded by a large portion of his countrymen as one of the ablest and most enlightened expounders of the Constitution, did not seem to think there was any doubt on the subject, although he belonged to the class who advocated the largest exercise of powers by the general government. From his first entrance into public life, in 1812, he gave great consideration to the subject of the currency, and in an elaborate speech in the Senate, in 1836, he said: "Currency, in a large and perhaps just sense, includes not only gold and silver and bank bills, but bills of exchange also. It may include all that adjusts exchanges and settles balances in the operations of trade and business; but if we understand by currency the legal money of the country, and

*2 How., 38. †9 How., 567.

that which constitutes a lawful tender for debts, and is the statute measure of value, then undoubtedly nothing is included but gold and silver. Most unquestionably there is no legal tender, and there can be no legal tender in this country, under the authority of this government or any other, but gold and silver,—either the coinage of our own mints or foreign coins, at rates regulated by Congress. This is a constitutional principle perfectly plain, and of the very highest importance. The states are expressly prohibited from making anything but gold and silver a tender in payment of debts, and, although no such express prohibition is applied to Congress, yet, as Congress has no power granted to it in this respect but to coin money, and to regulate the value of foreign coins, it clearly has no power to substitute paper, or anything else, for coin as a tender in payment of debts and in discharge of contracts. Congress has exercised this power fully in both its branches. It has coined moneyl and still coins it; it has regulated the value of foreign coins, and still regulates their value. The legal tender, therefore, the constitutiona, standard of value, is established and cannot be overthrown. To overthrow it would shake the whole system."

If, now, we consider the history of the times when the Constitution was adopted; the intentions of the framers of that instrument, as shown in their debates; the cotemporaneous exposition of the coinage power in the state conventions assembled to consider the Constitution, and in the public discussions before the people; the natural meaning of the terms used; the nature of the Constitution itself as creating a government of enumerated powers; the legislative exposition of nearly three-quarters of a century; the opinions of judicial tribunals, and the recorded utterances of statesmen, jurists, and commentators, it would seem impossible to doubt that the only standard of value authorized by the Constitution was to consist of metallic coins struck or regulated by the direction of Congress, and that the power to establish any other standard was denied by that instrument.

There are other considerations besides those I have stated, which are equally convincing against the constitutionality of the legal-tender provision of the act of February 25th, 1862, so far as it applies to private debts and debts by the government contracted previous to its passage. That provision operates directly to impair the obligation of such contracts. In the dissenting opinion, in the case of Hepburn vs. Griswold, this is admitted to be its operation, and the position is taken that, while the Constitution forbids the states to pass such laws, it does not forbid Congress to do this, and the power to establish a uniform system of bankruptcy, which is expressly conferred, is mentioned in support of the position. In some of the opinions of the state courts, to which our attention has been directed, it is denied that the provision in question impairs the obligation of previous contracts, it being asserted that a contract to pay money is satisfied, according to its meaning, by the payment of that which is money when the payment is made, and that if the law does not interfere with this mode of satisfaction, it does not impair the obligation of the contract. This position is true so long as the term money represents the same thing in both cases or their actual equivalents, but it is not true when the term has different meanings. Money is a generic term, and contracts for money are not made without a specification of the coins or denominations of money, and the number of them intended,

as eagles, dollars, or cents; and it will not be pretended that a contract for a specified number of eagles can be satisfied by a delivery of an equal number of dollars, although both eagles and dollars are money; nor would it thus be contended, though at the time the contract matured the legislature had determined to call dollars eagles. Contracts are made for things, not names or sounds, and the obligation of a contract arises from its terms and the means which the law affords for its enforcement.

A law which changes the terms of the contract, either in the time or mode of performance, or imposes new conditions, or dispenses with those expressed, or authorizes for its satisfaction something different from that provided, is a law which impairs its obligation, for such a law relieves the parties from the moral duty of performing the original stipulations of the contract, and it prevents their legal enforcement.

The notion that contracts for the payment of money stand upon any different footing in this respect from other contracts appears to have had its origin in certain old English cases, particularly that of mixed money,* which were decided upon the force of the prerogative of the king with respect to coin, and have no weight as applied to powers possessed by Congress under our Constitution. The language of Mr. Chief Justice Marshall in Faw vs. Marsteller† which is cited in support of this notion can only be made to express concurrence with it, when detached from its context and read separated from the facts, in reference to which it was used.

It is obvious that the act of 1862, changes the terms of contracts for the payment of money made previous to its passage, in every essential particular. All such contracts had reference to metallic coins, struck or regulated by Congress, and composed principally of gold and silver, which constituted the legal money of the country. The several coinage acts had fixed the weight, purity, forms, impressions and denominations of these coins, and had provided that their value should be certified by the form and impress which they received at the mint.

They had established the dollar as the money unit, and prescribed the grains of silver it should contain, and the grains of gold which should compose the different gold coins. Every dollar was therefore a piece of gold or silver certified to be of a specified weight and purity, by its form and impress. A contract to pay a specified number of dollars was then a contract to deliver the designated number of pieces of gold or silver of this character; and by the laws of Congress and of the several states the delivery of such dollars could be enforced by the holder.

The act of 1862 changes all this; it declares that gold or silver dollars need not be delivered to the creditor according to the stipulations of the contract; that they need not be delivered at all; that promises of the United States, with which the creditor has had no relations, to pay these dollars, at some uncertain future day, shall be received in discharge of the contracts;—in other words that the holder of such contracts shall take in substitution for them different contracts with another party, less valuable to him, and surrender the original.

Taking it, therefore, for granted that the law plainly impairs the obligation of such contracts, I proceed to inquire whether it is for that reason subject to any constitutional objection. In the dissenting opinion in Hepburn v. Griswold, it is said, as already mentioned, that the Constitution does not forbid legislation impairing the obligation of contracts.

*Davies' Reports, 48.
† 2 Cranch, 20.

It is true there is no provision in the Constitution forbidding in express terms such legislation. And it is also true that there are express powers delegated to Congress, the execution of which necessarily operates to impair the obligation of contracts. It was the object of the framers of that instrument to create a national government competent to represent the entire country in its relations with foreign nations and to accomplish by its legislation measures of common interest to all the people, which the several states in their independent capacities were incapable of effecting, or if capable, the execution of which would be attended with great difficulty and embarrassment. They, therefore, clothed Congress with all the powers essential to the successful accomplishment of these ends, and carefully withheld the grant of all other powers. Some of the powers granted, from their very nature, interfere in their execution with contracts of parties. Thus war suspends intercourse and commerce between citizens or subjects of belligerent nations; it renders during its continuance the performance of contracts previously made, unlawful. These incidental consequences were contemplated in the grant of the war power. So the regulation of commerce and the imposition of duties may so affect the prices of articles imported or manufactured as to essentially alter the value of previous contracts respecting them; but this incidental consequence was seen in the grant of the power over commerce and duties. There can be no valid objection to laws passed in execution of express powers that consequences like these follow incidentally from their execution. But it is otherwise when such consequences do not follow incidentally, but are directly enacted.

The only express authority for any legislation affecting the obligation of contracts is found in the power to establish a uniform system of bankruptcy, the direct object of which is to release insolvent debtors from their contracts upon the surrender of their property. From this express grant in the Constitution I draw a very different conclusion from that drawn in the dissenting opinion in Hepburn v. Griswold, and in the opinion of the majority of the court just delivered. To my mind it is a strong argument that there is no general power in Congress to interfere with contracts, that a special grant was regarded as essential to authorize an uniform system of bankruptcy. If such general power existed the delegation of an express power in the case of bankrupts was unnecessary. As very justly observed by counsel, if this sovereign power could be taken in any case without express grant, it could be taken in connection with bankruptcies, which might be regarded in some respects as a regulation of commerce made in the interest of traders.

The grant of a limited power over the subject of contracts necessarily implies that the framers of the Constitution did not intend that Congress should exercise unlimited power, or any power less restricted. The limitation designated is the measure of Congressional power over the subject. This follows from the nature of the instrument, as one of enumerated powers.

The doctrine that where a power is not expressly forbidden it may be exercised would change the whole character of our government. As I read the writings of the great commentators and the decisions of this

court, the true doctrine is the exact reverse, that if a power is not in terms granted, and is not necessary and proper for the exercise of a power thus granted, it does not exist.

The position that Congress possesses some undefined power to do anything which it may deem expedient, as a resulting power from the general purposes of the government, which is advanced in the opinion of the majority, would of course settle the question under consideration without difficulty, for it would end all controversy by changing our government from one of enumerated powers to one resting in the unrestrained will of Congress.

"The government of the United States," says Mr. Chief Justice Marshall, speaking for the court in Martin vs. Hunter's Lessee, (1 Whea., 326,) "can claim no powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given or given by necessary implication." This implication, it is true, may follow from the grant of several express powers as well as from one alone, but the power implied must, in all cases, be subsidiary to the execution of the powers expressed. The language of the Constitution respecting the writ of habeas corpus, declaring that it shall not be suspended unless, when in cases of rebellion or invasion, the public safety may require it, is cited as showing that the power to suspend such writ exists somewhere in the Constitution; and the adoption of the amendments is mentioned as evidence that important powers were understood by the people who adopted the Constitution to have been created by it, which are not enumerated, and are not included incidentally in any of those enumerated.

The answer to this position is found in the nature of the Constitution, as one of granted powers, as stated by Mr. Chief Justice Marshall. The inhibition upon the exercise of a specified power does not warrant the implication that, but for such inhibition, the power might have been exercised. In the convention which framed the Constitution a proposition to appoint a committee to prepare a bill of rights was unanimously rejected upon the ground that such a bill would contain various exceptions to powers not granted, and on this very account would afford a pretext for asserting more than was granted.* In the discussions before the people, when the adoption of the Constitution was pending, no objection was urged with greater effect than this absence of a bill of rights, and in one of the numbers of the Federalist, Mr. Hamilton endeavored to combat the objection. After stating several reasons why such a bill was not necessary, he said: "I go further and affirm that bills of rights, in the sense and to the extent they are contended for, are not only unnecessary in the proposed Constitution, but would even be dangerous. They would contain various exceptions to powers not granted, and on this very account would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained when no power is given by which restrictions may be imposed? I will not contend that such a provision would confer a regulating power, but it is evident that it would furnish to men disposed to usurp a plausible pretence for claiming that power. They might

* Lloyd's Debates, 433, 437.

urge, with a semblance of reason, that the Constitution ought not to be charged with the absurdity of providing against the abuse of an authority which was not given, and that the provision against restraining the liberty of the press afforded a clear implication that a right to prescribe proper regulations concerning it was intended to be vested in the national government. This may serve as a specimen of the numerous handles which would be given to the doctrine of constructive powers by the indulgence of an injudicious zeal for bills of rights."*

When the amendments were presented to the states for adoption they were preceded by a preamble stating that the conventions of a number of the states had, at the time of their adopting the Constitution, expressed a desire, "in order to prevent *misconception or abuse* of its powers, that further declaratory and restrictive clauses should be added."

Now, will any one pretend that Congress could have made a law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or the right of the people to assemble and petition the government for a redress of grievancies, had not prohibitions upon the exercise of any such legislative power been embodied in an amendment?

How truly did Hamilton say that, had a bill of rights been inserted in the Constitution, it would have given a handle to the doctrine of constructive powers. We have this day an illustration in the opinion of the majority of the very claim of constructive power which he apprehended, and it is the first instance, I believe, in the history of this court, when the possession by Congress of such constructive power has been asserted.

The interference with contracts by the legislation of the several states previous to the adoption of the Constitution was the cause of great oppression and injustice. "Not only," says Story, "was paper money issued and declared to be a tender in payment of debts, but laws of another character, well known under the appellation of tender laws, appraisement laws, instalment laws, and suspension laws were from time to time enacted, which prostrated all private credit and all private morals. By some of these laws the due payment of debts was suspended; debts were, in violation of the very terms of the contract, authorized to be paid by instalments at different periods; property of any sort, however worthless, either real or personal, might be tendered by the debtor in payment of his debts, and the creditor was compelled to take the property of the debtor, which he might seize on execution, at an appraisement wholly disproportionate to its known value. Such grievances and oppressions and others of a like nature were the ordinary results of legislation during the revolutionary war and the intermediate period down to the formation of the Constitution. They entailed the most enormous evils on the country and introduced a system of fraud, chicanery, and profligacy, which destroyed all private confidence and all industry and enterprise."†

To prevent the recurrence of evils of this character not only was the clause inserted in the Constitution prohibiting the states from issuing bills of credit and making anything but gold and silver a tender in payment of debts, but also the more general prohibition from passing any law impairing the obligation of contracts. "To restore public confidence completely," says Chief Justice Marshall, "it was necessary not only to pro-

* The Federalist, No. 84.
† Story's Com., sec. 1371.

hibit the use of particular means by which it might be effected, but to prohibit the use of any means by which the same mischief might be produced. The convention appears to have intended to establish a great principle, that contracts should be inviolable."*

It would require very clear evidence, one would suppose, to induce a belief that with the evils, resulting from what Marshall terms the system of lax legislation following the revolution, deeply impressed on their minds, the framers of the Constitution intended to vest in the new government created by them this dangerous and despotic power which they were unwilling should remain with the states, and thus widen the possible sphere of its exercise.

When the possession of this power has been asserted in argument (for until now it has never been asserted in any decision of this court) it has been in cases where a supposed public benefit resulted from the legislation, or where the interference with the obligation of the contract was very slight. Whenever a clear case of injustice, in the absence of such supposed public good, is stated, the exercise of the power by the government is not only denounced but the existence of the power is denied. No one, indeed, is found bold enough to contend that if A has a contract for one hundred acres of land, or one hundred pounds of fruit, or one hundred yards of cloth, Congress can pass a law compelling him to accept one-half of the quantity in satisfaction of the contract. But Congress has the same power to establish a standard of weights and measures as it has to establish a standard of value, and can, from time to time, alter such standard. It can declare that the acre shall consist of eighty square rods instead of one hundred and sixty, the pound of eight ounces instead of sixteen, and the foot of six inches instead of twelve, and if it could compel the acceptance of the same *number* of acres, pounds, or yards after such alteration instead of the actual *quantity* stipulated, then the acceptance of one-half of the quantity originally designated could be directly required without going through the form of altering the standard. No just man could be imposed upon by this use of words in a double sense, where the same names were applied to denote different quantities of the same thing, nor would his condemnation of the wrong committed in such case be withheld, because the attempt was made to conceal it by this jugglery of words.

The power of Congress to interfere with contracts for the payment of money is not greater or in any particular different from its power with respect to contracts for lands or goods. The contract is not fulfilled any more in one case than in the other by the delivery of a thing which is not stipulated, because by legislative action it is called by the same name. Words in contracts are to be construed in both cases in the sense in which they were understood by the parties at the time of the contract.

Let us for a moment see where the doctrine of the power asserted will lead. Congress has the undoubted right to give such denominations as it chooses to the coins struck by its authority, and to change them. It can declare that the dime shall hereafter be called a dollar, or, what is the same thing, it may declare that the dollar shall hereafter be composed of the grains of silver which now compose the dime. But would any body pretend that a contract for dollars, composed as at present, could

*Sturgis vs. Crowninshield, 4 Wheaton, 206.

be satisfied by the delivery of an equal number of dollars of the new issue? I have never met any one who would go to that extent. The answer always has been that would be too flagrantly unjust to be tolerated. Yet enforcing the acceptance of paper promises or paper dollars, if the promises can be so called, in place of gold or silver dollars, is equally enforcing a departure from the terms of the contract, the injustice of the measure depending entirely upon the actual value at the time of the promises in the market. Now reverse the case. Suppose Congress should declare that hereafter the eagle should be called a dollar or that the dollar should be composed of as many grains of gold as the eagle, would any body for a moment contend that a contract for dollars, composed as now of silver, should be satisfied by dollars composed of gold? I am confident that no judge sitting on this bench, and, indeed, that no judge in christendom could be found who would sanction the monstrous wrong by decreeing that the debtor could only satisfy his contract in such case by paying ten times the value originally stipulated. The natural sense of right which is implanted in every mind would revolt from such supreme injustice. Yet there cannot be one law for debtors and another law for creditors. If the contract can at one time be changed by congressional legislation for the benefit of the debtor it may at another time be changed for the benefit of the creditor.

For acts of flagrant injustice such as those mentioned there is no authority in any legislative body, even though not restrained by any express constitutional prohibition. For as there are unchangeable principles of right and morality, without which society would be impossible, and men would be but wild beasts preying upon each other, so there are fundamental principles of eternal justice, upon the existence of which all constitutional government is founded, and without which government would be an intolerable and hateful tyranny. There are acts, says Mr. Justice Chase, in Calder v. Bell,* which the federal and state legislatures cannot do, without exceeding their authority. Among these he mentions a law which punishes a citizen for an innocent action; a law that destroys or impairs the lawful private contracts of citizens; a law that makes a man a judge in his own cause; and a law that takes the property from A and gives it to B. "It is against all reason and right," says the learned justice, "for a people to entrust a legislature with such powers; and therefore it cannot be presumed that they have done it. The genius, the nature, and the spirit of our state governments amount to a prohibition of such acts of legislation, and the general principles of law and reason forbid them. The legislature may enjoin, permit, forbid, and punish; they may declare new crimes, and establish rules of conduct for all its citizens in future cases; they may command what is right and prohibit what is wrong, but they cannot change innocence into guilt, or punish innocence as a crime, or violate the rights of an antecedent lawful private contract, or the right of private property. To maintain that our federal or state legislatures possess such powers, if they had not been expressly restrained, would, in my opinion, be a political heresy, altogether inadmissible in our free republican governments."

In Ogden v. Saunders,† Mr. Justice Thompson, referring to the provisions in the Constitution forbidding the states to pass any bill of at-

*3 Dallas, 388. †12 Wheat., 303.

tainder, ex post facto law, or law impairing the obligation of contracts, says: "Neither provision can strictly be considered as introducing any new principle, but only for greater security and safety to incorporate into this charter provisions admitted by all to be among the first principles of government. No state court would, I presume, sanction and enforce an ex post facto law if no such prohibition was contained in the Constitution of the United States; so, neither would retrospective laws, taking away vested rights, be enforced. Such laws are repugnant to those fundamental principles upon which every just system of laws is founded. It is an elementary principle, adopted and sanctioned by the courts of justice in this country and in Great Britain, whenever such laws have come under consideration, and yet retrospective laws are clearly within this prohibition."

In Wilkeson v. Leland,* Mr. Justice Story, whilst commenting upon the power of the legislature of Rhode Island under the charter of Charles II., said: "The fundamental maxims of a free government seem to require that the rights of personal liberty and private property should be held sacred. At least no court of justice in this country would be warranted in assuming that the power to violate and disregard them, a power so repugnant to the common principles of justice and civil liberty, lurked under any general grant of legislative authority, or ought to be implied from any general expressions of the will of the people. The people ought not to be presumed to part with rights so vital to their security and well-being without very strong and direct expressions of such an intention."

Similar views to these cited from the opinions of Chase, Thompson, Story, and Marshall, are found scattered through the opinions of the judges who have preceded us on this bench. As against their collective force the remark of Mr. Justice Washington, in the case of Evans vs. Eaton, is without significance.† That was made at *nisi prius* in answer to a motion for a non-suit in an action brought for an infringement of a patent right. The State of Pennsylvania had, in March, 1787, which was previous to the adoption of the Constitution, given to the plaintiff the exclusive right to make, use, and vend his invention for fourteen years. In January, 1808, the United States issued to him a patent for the invention for fourteen years from that date. It was contended, for the non-suit, that after the expiration of the plaintiff's privilege granted by the state, the right to his invention became invested in the people of the state, by an implied contract with the government, and, therefore, that Congress could not consistently with the Constitution grant to the plaintiff an exclusive right to the invention. The court replied that neither the premises upon which the motion was founded, nor the conclusion, could be admitted; that it was not true that the grant of an exclusive privilege to an invention for a limited time implied a binding and irrevocable contract with the people that at the expiration of the period limited the invention should become their property; and that even if the premises were true, there was nothing in the Constitution which forbade Congress to pass laws violating the obligation of contracts.

The motion did not merit any consideration, as the federal court had no power to grant a non-suit against the will of the plaintiff in any case. The expression under these circumstances of any reason why the

* 2 Peters, 657. † 1 Pet., Cir. Ct., 323.

court would not grant the motion, if it possessed the power, was aside the case, and is not, therefore, entitled to any weight whatever as authority. It was true, however, as observed by the court, that no such contract with the public, as stated, was implied, and inasmuch as Congress was expressly authorized by the Constitution to secure for a limited time to inventors the exclusive right to their discoveries, it had the power in that way to impair the obligation of such a contract, if any had existed. And this is, perhaps, all that Mr. Justice Washington meant. It is evident from his language in Ogden v. Saunders, that he repudiated the existence of any general power in Congress to destroy or impair vested private rights.

What I have heretofore said respecting the power of Congress to make the notes of the United States a legal tender in payment of debts contracted previous to the act of 1862, and to interfere with contracts, has had reference to debts and contracts between citizens. But the same power which is asserted over these matters is also asserted with reference to previous debts owing by the government, and must equally apply to contracts between the government and the citizen. The act of 1862 declares that the notes issued shall be a legal tender in payment of *all debts, public and private*, with the exception of duties on imports and interest on the public debt. If they are a legal tender for antecedent private debts, they are also a legal tender for such debts owing by the United States, except in the cases mentioned. That any exception was made was a mere matter of legislative discretion. Express contracts for the payment of gold or silver have been maintained by this court, and specifically enforced on the ground that, upon a proper construction of the act of 1862, in connection with other acts, Congress intended to except these contracts from the operation of the legal-tender provision. But the power covers all cases if it exist at all. The power to make the notes of the United States the legal equivalent to gold and silver necessarily includes the power to cancel with them specific contracts for gold as well as money contracts generally. Before the passage of the act of 1862, there was no legal money except that which consisted of metallic coins, struck or regulated by the authority of Congress. Dollars then meant, as already said, certain pieces of gold or silver, certified to be of a prescribed weight and purity by their form and impress received at the mint. The designation of dollars, in previous contracts, meant gold or silver dollars as plainly as if those metals were specifically named.

It follows, then, logically, from the doctrine advanced by the majority of the court as to the power of Congress over the subject of legal tender, that Congress may borrow gold coin upon a pledge of the public faith to repay gold at the maturity of its obligations, and yet, in direct disregard of its pledge, in open violation of faith, may compel the lender to take, in place of the gold stipulated, its own promises; and that legislation of this character would not be in violation of the Constitution, but in harmony with its letter and spirit.

The government is, at the present time, seeking, in the markets of the world, a loan of several hundred millions of dollars in gold upon securities containing the promises of the United States to repay the money, principal and interest, in gold; yet this court, the highest tribunal of the country, this day declares, by its solemn decision, that should such loan be obtained, it is entirely competent for Congress to pay it off, not in

gold, but in notes of the United States themselves, payable at such time and in such manner as Congress may itself determine, and that legislation sanctioning such gross breach of faith would not be repugnant to the fundamental law of the land.

What is this but declaring that repudiation by the government of the United States of its solemn obligations would be constitutional? Whenever the fulfillment of the obligation in the manner stipulated is refused, and the acceptance of something different from that stipulated is enforced against the will of the creditor, a breach of faith is committed; and to the extent of the difference of value between the thing stipulated and the thing which the creditor is compelled to receive, there is repudiation of the original obligation. I am not willing to admit that the Constitution, the boast and glory of our country, would sanction or permit any such legislation. Repudiation in any form, or to any extent, would be dishonor, and for the commission of this public crime no warrant, in my judgment, can ever be found in that instrument.

Some stress has been placed in argument in support of the asserted power of Congress over the subject of legal tender in the fact that Congress can regulate the alloy of the coins issued under its authority, and has exercised its power in this respect, without question, by diminishing, in some instances, the actual quantity of gold or silver they contain. Congress, it is assumed, can thus put upon the coins issued other than their intrinsic value; therefore, it is argued Congress may, by its declaration, give a value to the notes of the United States, issued to be used as money, other than that which they actually possess.

The assumption and the inference are both erroneous, and the argument thus advanced is without force, and is only significant of the weakness of the position which has to rest for its support on an assumed authority of the government to debase the coin of the country.

Undoubtedly Congress can alter the value of the coins issued by its authority by increasing or diminishing, from time to time, the alloy they contain, just as it may alter, at its pleasure, the denominations of the several coins issued, but there its power stops. It cannot make these altered coins the equivalent of the coins in their previous condition; and, if the new coins should retain the same names as the original, they would only be current at their true value. Any declaration that they should have any other value would be inoperative in fact, and a monstrous disregard by Congress of its constitutional duty. The power to coin money, as already declared by this court, is a great trust devolved upon Congress, carrying with it the duty of creating and maintaining an uniform standard of value throughout the Union,* and it would be a manifest abuse of this trust to give to the coins issued by its authority any other than their real value. By debasing the coins, when once the standard is fixed, is meant giving to the coins, by their form and impress, a certificate of their having a relation to that standard different from that which, in truth, they possess; in other words, giving to the coins a false certificate of their value. Arbitrary and profligate governments have often resorted to this miserable scheme of robbery, which Mill designates as a shallow and impudent artifice, the "least covert of all modes of knavery, which consists in calling a shilling a pound, that a

* U. S. vs. Marrigold, 9 How., 567.

debt of one hundred pounds may be canceled by the payment of one hundred shillings."*

In this country no such debasement has ever been attempted, and I feel confident that none will ever be tolerated. The changes in the quantity of alloy in the different coins has been made from time to time, not with any idea of debasing them, but for the purpose of preserving the proper relative value between gold and silver. The first coinage act, passed in 1792, provided that the coins should consist of gold, silver, and copper—the coins of cents and half-cents consisting of copper, and the other coins consisting of gold and silver—and that the relative value of gold and silver should be as fifteen to one, that is, that an ounce of gold should be taken as the equal in value of fifteen ounces of silver.

In progress of time, owing to the increased production of silver, particularly from the mines of Mexico and South America, this relative value was changed. Silver declined in relative value to gold until it bore the relation of one to sixteen, instead of one to fifteen. The result was that the gold was bought up as soon as coined, being worth intrinsically sixteen times the value of silver, and yet passing by law only at fifteen times such value, and was sent out of the country to be re-coined. The attention of Congress was called to this change in the relative value of the two metals and the consequent disappearance of gold coin. This led, in 1834,† to an act adjusting the rate of gold coin to its true relation to silver coin.

The discovery of gold in California, some years afterwards, and the great production of that metal, again changed in another direction the relative value of the two metals. Gold declined, or in other words, silver was at a premium, and as gold coin before 1834 was bought up, so now silver coin was bought up and a scarcity of small coin for change was felt in the community. Congress again interfered, and in 1853 reduced the amount of silver in coins representing fractional parts of a dollar, but even then these coins were restricted from being a legal tender for sums exceeding five dollars, although the small silver coins of previous issue continued to be a legal tender for any amount. Silver pieces of the denomination of three cents had been previously authorized in 1851, but were only made a tender for sums of thirty cents and under. These coins did not express their actual value, and their issue was soon stopped, and in 1853 their value was increased to the standard of coins of other fractional parts of a dollar.

The whole of this subject has been fully and satisfactorily explained in the very able and learned argument of the counsel who contended for the maintenance of the original decision of this court in Hepburn v. Griswold. He showed by the debates that Congress has been moved, in all its actions under the coinage power, only by an anxious desire to ascertain the true relative value of the two precious metals, and to fix the coinage in accordance with it; and that in no case has any deviation from intrinsic value been permitted except in coins for fractional parts of a dollar, and even that has been only of so slight a character as to prevent them from being converted into bullion, the actual depreciation being made up by their portability and convenience.

It follows, from this statement of the action of Congress in altering at

* Mill's Political Economy, vol. 2, page 20.
† 4 U. S. Statutes at Large, p. 699.

different times the alloy of certain coins, that the assumption of power to stamp metal with an arbitrary value and give it currency, does not rest upon any solid foundation, and that the argument built thereon goes with it to the ground.

I have thus far spoken of the legal-tender provision with particular reference to its application to debts contracted previous to its passage. It only remains to say a few words as to its validity when applied to subsequent transactions.

So far as subsequent contracts are made payable in notes of the United States, there can of course be no objection to their specific enforcement by compelling a delivery of an equal amount of the notes, or by a judgment in damages for their value as estimated in gold or silver dollars; nor would there be any objection to such enforcement if the legal-tender provision had never existed. From the general use of the notes throughout the country and the disappearance of gold and silver coin from circulation, it may perhaps be inferred, in most cases, that notes of the United States are intended by the parties where gold or silver dollars are not expressly designated, except in contracts made in the Pacific States, where the constitutional currency has always continued in use. As to subsequent contracts, the legal-tender provision is not as unjust in its operation as when applied to past contracts, and does not impair to the same extent private rights. But so far as it makes the receipt of the notes, in absence of any agreement of the parties, compulsory in payment of such contracts, it is, in my judgment, equally unconstitutional. This seems, to me, to follow necessarily from the duty already mentioned cast upon Congress by the coinage power—to create and maintain an uniform metallic standard of value throughout the Union. Without a standard of value of some kind, commerce would be difficult, if not impossible, and just in proportion to the uniformity and stability of the standard, is the security and consequent extent of commercial transactions. How is it possible for Congress to discharge its duty by making the acceptance of paper promises compulsory in all future dealings—promises which necessarily depend for their value upon the confidence entertained by the public in their ultimate payment, and the consequent ability of the holder to convert them into gold or silver—promises which can never be uniform throughout the Union, but must have different values in different portions of the country; one value in New York, another at New Orleans, and still a different one at San Francisco.

Speaking of paper money issued by the states,—and the same language is equally true of paper money issued by the United States,—Chief Justice Marshall says, in Craig v. The State of Missouri: "Such a medium has been always liable to considerable fluctuation. Its value is continually changing; and these changes often great and sudden, expose individuals to immense loss, are the sources of ruinous speculations, and destroy all confidence between man and man. To cut up this mischief by the roots, a mischief which was felt through the United States and which deeply affected the interest and prosperity of all, the people declared in their constitution that no state should emit bills of credit."*

Mr. Justice Washington, after referring, in Ogden vs. Saunders,† to

*4 Peters, 432. †12 Wheat., 265.

the provision of the Constitution declaring that no state shall coin money, emit bills of credit, make anything but gold and silver coin a tender in payment of debts, says: "These prohibitions, associated with the powers granted to Congress 'to coin money and to regulate the value thereof, and of foreign coin,' most obviously constitute members of the same family, being upon the same subject, and governed by the same policy. This policy was, to provide a fixed and uniform standard of value throughout the United States, by which the commercial and other dealings between the citizens thereof, or between them and foreigners, as well as the moneyed transactions of the government, should be regulated. For it might well be asked, why vest in Congress the power to establish a uniform standard of value by the means pointed out, if the states might use the same means, and thus defeat the uniformity of the standard, and consequently the standard itself? And why establish a standard at all for the government of the various contracts which might be entered into, if those contracts might afterwards be discharged by a different standard, or by that which is not money, under the authority of state tender laws? It is obvious, therefore, that these prohibitions in the tenth section are entirely homogeneous, and are essential to the establishment of an uniform standard of value in the formation and discharge of contracts."

It is plain that this policy cannot be carried out, and this fixed and uniform metallic standard of value throughout the United States be maintained, so long as any other standard is attempted, which of itself has no intrinsic value and is forever fluctuating and uncertain.

For the reasons which I have endeavored to unfold, I am compelled to dissent from the judgment of the majority of the court. I know that the measure, the validity of which I have called in question, was passed in the midst of a gigantic rebellion, when even the bravest hearts sometimes doubted the safety of the Republic, and that the patriotic men who adopted it did so under the conviction that it would increase the ability of the government to obtain funds and supplies, and thus advance the national cause. Were I to be governed by my appreciation of the character of those men, instead of my views of the requirements of the Constitution, I should readily assent to the views of the majority of the court. But, sitting as a judicial officer, and bound to compare every law enacted by Congress with the greater law enacted by the people, and being unable to reconcile the measure in question with that fundamental law, I cannot hesitate to pronounce it as being, in my judgment, unconstitutional and void.

In the discussions which have attended this subject of legal tender there has been at times what seemed to me to be a covert intimation, that opposition to the measure in question was the expression of a spirit not altogether favorable to the cause, in the interest of which that measure was adopted. All such intimations I repel with all the energy I can express. I do not yield to any one in honoring and reverencing the noble and patriotic men who were in the councils of the nation during the terrible struggle with the rebellion. To them belong the greatest of all glories in our history,—that of having saved the Union, and that of having emancipated a race. For these results they will be remembered and honored so long as the English language is spoken or read among men. But I do not admit that a blind approval of every measure which they

MSH 30260

may have thought essential to put down the rebellion is any evidence of loyalty to the country. The only loyalty which I can admit consists in obedience to the Constitution and laws made in pursuance of it. It is only by obedience that affection and reverence can be shown to a superior having a right to command. So thought our great Master when he said to his disciples: "If ye love me, keep my commandments."

END OF
TITLE